(3) 1

CA 1004

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Single Bench

SECOND APPEAL NO. 291 OF 2003

APPELLANTS/ DEFENDANTS

1. Ramdhan, S/o Tanagu, Aged about 49 years, Caste Ganda, Resident of Village Champa, Tah. Janjgir, Distt. Bilaspur.

2. Budhkunwar S/o Sukh Dev, Caste Ganda, R/o of Village Champa, Tah. Janjgir, Distt. Bilaspur.

P. R. No. 9/4/03
Presented by Shri Pradeep Sinha.
dated 21/04/03

VERSUS

RESPONDENT/ PLAINTIFF

Sudharam, S/o Laxman Prasad, aged about 45 years, Caste Ganda, R/o Village Champa, Tahsil Janjgir, Distt. Bilaspur.

SECOND APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE, 1908

(23)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक S.A.No. 291/03 **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	22/06/2005	

Shri Sanjay K. Agrawal, Counsel for the appellants.

Heard on admission and M.C.P.No.797/2003.

Appellants/defendants and respondent/plaintiff are near relatives. Plaintiff filed a suit for recovery of possession against the defendants stating that the suit property was earlier owned by Chaitu @ Sukhru who mortgaged the suit land to plaintiff's father Laxman on 14/01/1941 and promised to redeem the land by Chait Poornima. Chaitu @ Sukhru failed to redeem the land and on 24/11/1941 by sale deed transferred ownership in favour of Laxman for due consideration. In the year 1977 at the request of defendant No.1 Laxman allowed him to live in the suit house. After some time with consent of defendant No.1, defendant No.2 also started living in the suit house. The plaintiff's father Laxman died on 19/08/1977. After the death of Laxman, plaintiff inherited the suit house who needs the said house for his bona fide requirement. Defendants denying the suit averment, submitted that defendant No.2 invested amount for purchasing the suit house, as such the house belongs to him.

Learned lower Court, after evaluating the whole evidence, held that plaintiff is the owner of the suit house and defendants are occupying the same illegally and accordingly decreed the suit. Aggrieved with the said decision defendants

(पीछे देखिये)

(24)

XI-HC-22

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preferred Civil Appeal No.34-A/2002 and the appellate Court vide judgment and decree dated 13/03/2003, after evaluating the evidence, confirmed the finding of the lower Court and dismissed the appeal.

During argument, learned counsel appearing for the appellants contended that both the Courts below decided the lis relying on unregistered documents Ex.P/1 and P./2 inadmissible in evidence and this is the substantial question of law involved in this second appeal.

Ex.P/1 is a mortgage deed executed by Chaitu in favour of father of the plaintiff whereby Chaitu took a loan of Rs.10/- from the father of the plaintiff and mortgaged the suit property. The document Ex.P/1 had been executed on 14/01/1941. Thereafter Chaitu executed a sale deed for the said property in favour of Laxman on 24/11/1941 for consideration of Rs.10/- and stated that he had already handed over possession on 14/01/1941 when the mortgage took place. Sale accompanied with delivery of possession, has been made for a sum of Rs.10/-, therefore, the sale executed by Chaitu does not violate the provision of Section 54 of the Transfer of Property Act. Apart from that, defendants have not pleaded that the sale executed by Chaitu is defective or does not confer title on Laxman the father

(पीछे देखिये)

(25)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक SA 291/2003 **सन्** 200

..... **विरुद्ध** .....

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of the plaintiff. Mortgage is there and thereafter sale deed has been executed by Chaitu in favour of father of the plaintiff Laxman. Neither Chaitu nor any of his representatives has challenged both of these documents.

Both the Courts below have concurrently held that plaintiff is the title holder of the suit property and the suit property is in unauthorized possession of the defendants.

Taking into consideration all the facts of the case, findings of both the Courts below and the arguments advanced by counsel for the appellants, I am of the opinion that no substantial question of law is involved in this second appeal. Therefore, the second appeal is liable to be dismissed and is accordingly dismissed. Consequently, M.C.P.No.797/2003 stands disposed of.

Sd/-
V.K. Shrivastava
Judge

Raju

(पीछे देखिये)